

These are the tentative rulings for civil law and motion matters set for Thursday, July 24, 2014, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, July 23, 2014. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

**NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. More information is available at the court's website, [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).**

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**EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.**

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**1. M-CV-0060144 Discover Bank vs. Farrell, Charles P.**

As an initial matter, the moving party is reminded to review Placer Court Local Rule 20.2.3, which requires that information regarding the court's tentative ruling procedure be included in the notice of motion.

Plaintiff's unopposed Motion to Deem Requests for Admissions Admitted is granted. The matters encompassed in plaintiff's Request for Admissions, Set One are deemed admitted. Sanctions in the amount of \$310.00 are imposed upon defendant Charles P. Farrell pursuant to CCP§2033.280(c).

**2. M-CV-0060842 K & P Ultimate Construction vs. Pryor, Lea L.**

Plaintiff's Motion to Have Matters Deemed Admitted is denied in light of defendant's response filed on July 11, 2014. The request for sanctions is also denied as the court finds defendant filed substantially compliant responses to the requests for admissions.

If oral argument is requested, plaintiff's request for telephonic appearance is granted. Counsel is referred to Placer Court Local Rule 20.8 for more information to arrange a telephonic appearance.

**3. M-CV-0061478 U.S. Bank Trust, N.A. vs. Bracken, Theresa A.**

The motion for summary judgment is dropped from the calendar as no moving papers were filed with the court.

**4. S-CV-0024808 Gonero, Alex vs. Union Pacific Railroad Co., et al**

Plaintiff's Motion for New Trial and/or Judgment Notwithstanding the Verdict and defendant's Motion for Judgment Notwithstanding the Verdict are continued, on the court's own motion, to July 31, 2014 at 8:30 a.m. in Department 44 to be heard by the Honorable Jeffrey S. Penney.

**5. S-CV-0024886 Hannum, Mark W. et al vs. Kuchar, Veryl T.**

Mark Kassenbrock's Motions to be Relieved as Counsel for plaintiffs Mark Hannum and Karen Hannum are granted and he shall be relieved as counsel of record effective upon the filing of the proof of service of the signed order upon plaintiffs Mark Hannum and Karen Hannum.

**6. S-CV-0026600 Andrus, Charles, et al vs. Meritage Homes of California, Inc**

Intervenors' unopposed Motion for Leave to Intervene is granted. Intervenors shall file and serve their complaint in intervention on or before July 25, 2014.

**7. S-CV-0030195 Bellomy, John H. vs. Hunt, Terrie L.**

Plaintiff's Motion to File Second Amended Complaint is granted. Defendant's objections nos. 1 and 2 are overruled. Plaintiff shall file and serve his second amended complaint on or before July 25, 2014.

**8. S-CV-0030874 Powers, Craig vs. East West Partners-Tahoe, Inc.**

The motion for leave to file second amended complaint is continued, on the court's own motion, to July 31, 2014 at 8:30 a.m. to be heard in conjunction with the motion to dismiss and demurrer.

**9. S-CV-0031000 Donaldson, Alan, et al vs. Lennar Renaissance, Inc., et al**

Jeld-Wen's unopposed Motion for Determination of Good Faith Settlement is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonableness range of the settling tortfeasor's proportionate shares of liability for plaintiffs' injuries and therefore is in good faith within the meaning of CCP§877.6.

**10. S-CV-0031288                      Pre/Plastics, Inc. vs. Nexeo Solutions, LLC**

Plaintiff's Motion to Strike Motion for Summary Judgment, or in the alternative, Continue the Motion for Summary Judgment and Trial

The motion is granted in part. To the extent the motion seeks to strike the motion for summary judgment, the motion is denied. Plaintiff's request to continue the motion is granted pursuant to CCP§437c(h). Defendant's motion for summary judgment is continued to August 28, 2014 at 8:30 a.m. in Department 40. Plaintiff's request to continue the trial date is denied. The court, however, finds good cause to hear the motion within 30 days of the trial date.

Plaintiff's Motion to Compel Person Most Qualified Deposition of Ashland

The motion is denied. Both parties' requests for sanctions are denied.

**11. S-CV-0031530                      Moore, Gregory M vs. Wells Fargo Bank, N.A. et al**

Defendant's Motion to Bifurcate or Sever Issues

Defendant's motion is denied without prejudice to renew the motion at the time of trial.

Plaintiff's Motions to Compel

All three motions to compel further responses are denied.

**12. S-CV-0031634                      Carta, Lia vs. Howard, Elvira**

The motion for terminating sanctions is continued, on the court's own motion, to July 31, 2014 at 8:30 a.m. to be heard in conjunction with the motion to compel discovery.

**13. S-CV-0032922                      Glacken, Gregory, et al vs. Bank of America, N.A., et al**

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, such argument shall heard in Department 43:

Defendants' unopposed Motion to Continue Trial is granted as they have made a sufficient good cause showing to grant the requested relief. (California Rules of Court, Rule 3.1332(c).) The trial is continued to April 6, 2015 at 8:30 a.m. in a department to be assigned. The Civil Trial Conference (CTC) is continued to March 27, 2015 at 8:30 a.m. in Department 42. The Mandatory Settlement Conference (MSC) is continued to March 20, 2015 at 8:30 a.m. in a department to be assigned with the parties reporting to the Master Calendar Division.

**14. S-CV-0033202            Thomas, Mieko vs. Godfrey, Dawn R.**

The motion to quash is dropped from the calendar as no moving papers were filed with the court.

**15. S-CV-0033700            Wells Fargo Bank, N.A. vs. Arroyo, Pedro S., et al**

Defendant JP Morgan Chase Bank's (Chase) Motion for Judgment on the Pleadings is granted. A motion for judgment on the pleading may be granted where the complaint or cross-complaint does not state sufficient facts to constitute a cause of action. (CCP§438(c)(1)(B)(ii).) Upon review, the complaint does not allege sufficient facts to support a cause of action against Chase.

**16. S-CV-0033852            U.S. Bank, N.A. vs. Shehadeh, Nabil**

Plaintiff's Motion to Deem Admissions Admitted and to Compel Responses to Form Interrogatories is denied in light of defendant's response filed on July 11, 2014. Sanctions in amount of \$502.50 are imposed on defendant Nabil Shehadeh pursuant to CCP§2033.280(c).

**17. S-CV-0033876            Conley, Corie, et al vs. Lepper, Nanci, et al**

Defendant's Motion to Quash Service of Summons is granted pursuant to CCP§473.5. Service of the summons as to defendant Nanci Lepper is hereby quashed.

**18. S-CV-0033922            Kruzic, Shannon vs. Ocwen Loan Servicing, LLC, et al**

Defendants' Demurrer to the First Amended Complaint

Ruling on Request for Judicial Notice

Defendants' request for judicial notice is granted in its entirety.

Ruling on Demurrer

As an initial matter, plaintiff makes a request in her opposition for leave to amend her pleading to assert new causes of action. The court declines to address this improper request, which is better addressed through a noticed motion.

Additionally, the court notes that defendants renew their challenge to the first and second causes of action in this current demurrer. These causes of action were determined to be sufficiently pled in the court's April 17, 2014 ruling. Thus, the renewed demurrer to these causes of action are overruled.

This leaves the demurrer to the third cause of action for quiet title. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or

accuracy of the described conduct. (*Picton v. Anderson Union High School* (1996) 50 Cal.App.4th 726, 733.) As such, all properly pled facts are assumed to be true as well as those that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1153.) When a party seeks to quiet title, the party must sufficiently allege facts to address tender. Generally, a mortgagor cannot maintain a quiet title action on an unenforceable debt without a sufficient allegation of tender. (see *Mix v. Sodd* (1981) 126 Cal.App.3d 386, 390; *Miller v. Provost* (1994) 26 Cal.App.4th 1703, 1707.) “This rule is based upon the equitable principle that he who seeks equity must do equity. That is, even though the debt is unenforceable, a court of equity will not aid a person in avoiding the payment of his or her debts.” (*Mix v. Sodd* (1981) 126 Cal.App.3d 386, 390.) The allegations in the FAC provide little facts to address the matter of tender. Most of the allegations provide legal argument that tender is not required. There is also a single conclusory allegation that plaintiff is entitled to an offset on any amount allegedly owed. (FAC ¶144.) These legal arguments and single conclusory allegation are insufficient to plead the tender requirement for a quiet title action. For these reasons, the demurrer is sustained as to the third cause of action.

The last matter to address is whether plaintiff should be afforded leave to amend her quiet title cause of action. It is the plaintiff that bears the burden of demonstrating how the complaint may be amended to cure the defects therein. (*Assoc. of Comm. Org. for Reform Now v. Dept. of Indus. Relations* (1995) 41 Cal.App.4th 298, 302.) Absent a showing by plaintiff that a reasonable possibility exists that the defects may be cured by an amendment, a demurrer will be sustained without leave to amend. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) This is plaintiff’s second attempt to remedy the tender deficiency in her pleading, a deficiency that was identified by the court in the previous demurrer. The FAC provides legal argument to explain why tender should not apply but does not provide for factual allegations. Her opposition focuses upon the same discussion, plaintiff argues that tender should not be applicable but fails to provide any sufficient factual allegations that would sufficiently address the deficiencies in the FAC. Since a reading of the FAC and plaintiff’s opposition do not suggest that an amendment will cure the deficiencies, the demurrer to the quiet title cause of action is sustained without leave to amend.

Defendants shall file and serve their answer or general denial on or before August 1, 2014.

Defendant’s request for telephonic appearance is granted. Counsel is informed that all telephonic appearances are governed by and must be arranged pursuant to Placer Court Local Rule 20.8. Further information on the telephonic appearance process under Local Rule 20.8 is available at [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).

**19. S-CV-0034134                      Nicolatti, Caroline vs. Future Ford Lincoln**

Defendant's Demurrer is sustained with leave to amend. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Picton v. Anderson Union High School* (1996) 50 Cal.App.4th 726, 733.) As such, all properly pled facts are assumed to be true as well as those that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) A review of both the first and second causes of action reveals conclusory pleading with incorporation by reference to the general factual allegations. This conclusory pleading does not sufficiently identify the legal theories that equate to unlawful, unfair, and/or illegal business practices under the UCL. Nor does this conclusory pleading sufficiently identify the legal theories that establish CLRA violations.

The second amended complaint shall be filed and served on or before August 1, 2014.

**20. S-CV-0034285                      Bray, Darren, et al vs. Meritage Homes, of Calif., Inc.**

Defendant's Demurrer to the FAC is sustained with leave to amend. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Picton v. Anderson Union High School* (1996) 50 Cal.App.4th 726, 733.) As such, all properly pled facts are assumed to be true as well as those that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Defendant challenges only the seventh cause of action, which asserts a claim for negligence per se. It is noted that the FAC also alleges negligence in the fifth cause of action. Negligence per se, however, is not a separate tort since there must be an underlying claim of ordinary negligence to invoke the presumption under Evidence Code §669. (*Millard v. Biosources, Inc.* (2007) 156 Cal.App.4th 1338, 1353; *Quiroz v. Seventh Avenue Center* (2006) 140 Cal.App.4th 1256, 1285.) “ ‘The doctrine of negligence per se is not a separate cause of action, but creates an evidentiary presumption that affects the standard of care in a cause of action for negligence.’ [Citation.] The doctrine of negligence per se does not provide a private right of action for violation of a statute. [Citation.]” (*Johnson v. Honeywell International Inc.* (2009) 179 Cal.App.4th 549, 555-556 quoting *Millard v. Biosources, Inc.* (2007) 156 Cal.App.4th 1353, fn. 2.) In reviewing the FAC, there are insufficient allegations to support that the seventh cause of action should be treated as a separate cause of action in opposition to this general rule.

The second amended complaint shall be filed and served on or before August 1, 2014.

**21. S-CV-0034446                      Graves, Gene, et al vs. Bank of America, N.A., et al**

The Demurrer to the Complaint is dropped from the calendar. Plaintiffs filed a first amended complaint on July 8, 2014.

**22. S-CV-0034662                      Sumrall, Frederick vs. Foresthill Public Utility District**

The Demurrer to the Complaint dropped from the calendar. A first amended complaint was filed on July 16, 2014.

**23. S-CV-0034792                      Grant, Susan vs. Korsgaard, Brett, et al**

The Petition to Compel and Appoint an Arbitrator is granted. The parties shall meet and confer in order to reach an agreement regarding a mutually acceptable arbitrator. An OSC re Selection of Arbitrator is set for September 23, 2014 at 11:30 a.m. in Department 40. If the parties have not agreed upon an arbitrator by August 22, 2014, each party shall submit 3 names to the court so that an arbitrator may be chosen. The submissions shall be filed and served on or before September 12, 2014.

**24. S-CV-0034801                      Krause, Scott, et al - In Re the Petition of**

The appearances of the parties are required on the Petition for Minor's Compromise. Petitioner shall bring an application to be appointed guardian ad litem to the hearing. The appearance of the minor at the hearing is waived.

**25. S-CV-0034856                      Raganit, Sally Trustee, et al vs. Lee, Alfred, et al**

The appearances of the parties are required on plaintiff's application for appointment of receiver.

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